

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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SUMMARY
PUBLIC MEETING/PUBLIC HEARING/BUSINESS MEETING
December 16, 2010
Sacramento, California

I. PUBLIC MEETING

A. CALL TO ORDER AND INTRODUCTIONS

Chairman John MacLeod called the Public Meeting of the Occupational Safety and Health Standards Board (Board) to order at 10:00 a.m., December 16, 2010, in the Auditorium of the State Resources Building, Sacramento, California.

ATTENDANCE

Board Members Present

John MacLeod
Bill Jackson
Jack Kastorff
Hank McDermott
Guy Prescott
Dave Thomas
Willie Washington

Board Members Absent

Board Staff

Marley Hart, Executive Officer
Mike Manieri, Principal Safety Engineer
Tom Mitchell, Senior Safety Engineer
David Beales, Legal Counsel
Bernie Osburn, Staff Services Analyst
Chris Witte, Executive Secretary

Division of Occupational Safety and Health

Steve Smith, Principal Safety Engineer

Others present

Boyd Jensen, Barrett & Jensen
Wendy Holt, CSATF/AMPTP
Ray Rieger, CalPRO
Sam Johnson, Funderland
Kate Smiley, AGC
Kevin Bland, CFCA, RCA
Melanie Reagan, Joint Fairs Committee
Steve Heller, State Fund

Joan Gaut, CTA Liaison
Marti Fisher, Cal Chamber
Ken Rieger, CalPRO
Chris Lopez, RCS, Inc.
Kevin Thompson, Cal-OSHA Reporter
Judi Freyman, Mercer OSH Networks
Bob Raymer, CBIA
Bruce Wick, CalPASC

Dan Leacox, Greenberg Traurig
Jim Hall, CalPRO
Trey Johnson, CalPRO
Earl Butler, Butler Amusements
Silvio Enran, CBIA
Dave Helm, Safety Center

Bob Johnson, OABA
Gail Jeff, CalPRO
Steve Johnson, ARC-BAC
Peter Robertson, CalTrans
John Shook, Safety Certify
Tony Guadayno, Safety Center

B.

OPENING COMMENTS

Chair MacLeod indicated that this portion of the Board's meeting is open to any person who is interested in addressing the Board on any matter concerning occupational safety and health or to propose new or revised standards or the repeal of standards as permitted by Labor Code Section 142.2

Dan Leacox, Greenberg Traurig, thanked the Board and Division staffs for the speed with which elevator variance applications were handled and processed during the year.

Boyd Jensen, Garrett & Jensen, presented a petition from the California Portable Ride Operators Association (CalPRO) to create qualification standards for inspectors and inspections of portable amusement rides and to permit third-party independent inspectors to conduct the inspections rather than Division staff, who sometimes do not have adequate experience with portable rides; in addition, using DOSH inspectors is extremely costly.

The most important line of inspection is the daily ride operators, who are trained employees who watch and listen to the ride on a daily basis. The second most important line is the insurance companies that pay independent inspectors at the beginning of the year as part of the ride insurance to inspect the rides and ensure that proper training procedures are in place. The third level of inspection is the independent inspectors employed by the various fairgrounds to observe the rides as they are installed on the midway. The fourth and final level of inspection is DOSH. Unfortunately, the cost of the DOSH inspection far exceeds the value represented by the combination of inexperienced inspectors and the level of inspection performed.

In response to a question from Mr. Kastorff, Mr. Jensen stated that the insurance companies do not have in-house inspectors for amusement park rides; they use third-party inspectors. The Petitioners are asking that the operators be allowed to employ the insurance companies' third-party inspectors in place of or in addition to the DOSH inspectors.

The following people spoke in support of the petition:

- Bob Johnson, President, Outdoor Amusement Business Association
- Jim Hall, President, CalPRO

- Chris Lopez, Vice President, RCS, Inc.
- Earl Butler, Butler Amusements
- Bruce Pearlman, operator
- Anthony Guadayno, Guadayno and Sons
Amusements
- John Shook, QSI
- Ray Rieger, Rieger Loss Control Services,
LLC
- Dave Helm, operator
- Ken Johnston, operator

Mr. Kastorff asked Mr. Hall about the necessary qualifications to become a certified ride inspector in Oregon and Washington. Mr. Hall responded that it takes hours of training at the the National Amusement Ride Safety Organization (NARSO) safety seminars. In order to maintain his certification, Mr. Hall must attend continuing training seminars, and NARSO reviews his training every two years.

Mr. Kastorff stated that, in California, before an individual can be certified to inspect boilers on behalf of an insurance company, the inspector must pass a written exam; he asked Mr. Hall whether he would be willing to help to create a written exam in California to certify third-party amusement ride inspectors. Mr. Hall responded affirmatively.

Mr. Pearlman stated that California has a written exam for inspectors of permanent amusement rides, and the Petition would require that inspectors of portable rides pass that exam in addition to having continuing education in the field and certifications from the national associations. The standard proposed in this petition would create the most qualified inspectors in the country.

In response to a question from Mr. Prescott, Mr. Hall identified the Department of Labor Industries in Oregon and the Department of Labor in Washington as the government entities in those states that issue the inspectors' certifications.

Mr. Washington expressed some confusion regarding the real issue addressed by this petition. He stated that there are several programs in which outside certified inspectors are inspecting equipment, and one of the things that DOSH checks when it performs an inspection of an employer is whether or not an equipment inspection has been performed and when. He asked whether the petition would change the current procedure. Mr. Jensen responded that the petition would implement a procedure similar to that for permanent amusement rides, in which a Qualified Safety Inspector (QSI), who is certified by the state each year, would inspect the rides in place of the DOSH inspectors. DOSH would oversee the process to ensure that the inspectors were qualified and when the inspections were performed.

Mr. Washington expressed more concern regarding the terrain on which the rides are erected rather than a general safety inspection. A ride may pass a general safety inspection, but if it is erected on unstable ground, there could be an adverse affect. He asked whether the petition addresses that concern. Mr. Jensen responded affirmatively.

Chair MacLeod reminded the commenters that they are commenting on a petition that has yet to be evaluated by the Board or Division staff.

Mr. Jackson added that, while the comments are welcome, and it is important for them to be heard, the Board has not yet had an opportunity to see the petition, and the staff has not had an opportunity to evaluate and make recommendations regarding the petition. Thus, the Board does not yet know anything about what the commenters are trying to communicate.

Mr. Thomas asked for an explanation of the difference in qualifications and certifications between a DOSH inspector and a QSI, besides the cost. Mr. Helm stated that the DOSH employees that inspect the portable amusement rides do not have the comprehensive training required for QSIs.

Mr. Pearlman stated that before any amusement ride can be operated in California, it has to have a permit to operate. A permit to operate can only be issued after an inspection by a DOSH inspector. He stated that the petition is simply asking that portable amusement ride operators be able to use third party independent inspectors, as are permitted for elevators, pressure vessels, and other areas where third-party inspectors and engineers can submit their reports to DOSH, and DOSH would then issue a permit.

Mr. Prescott asked that, during the evaluation of the petition, staff evaluate the difference in training between DOSH inspectors and QSIs. Mr. Johnston stated that the requirements for being a DOSH inspector are two years or three years in the business and passing a civil exam. The program proposed in the petition would be a much better and safer program, overseen still by DOSH.

C.

ADJOURNMENT

Chair MacLeod adjourned the public meeting at 10:47 a.m.

II. BUSINESS MEETING

Chair MacLeod called the Business Meeting of the Board to order at 10:47 a.m., December 16, 2010, in the Auditorium of the State Resources Building, Sacramento, California.

A. PROPOSED SAFETY ORDER FOR ADOPTION

1. TITLE 8: **GENERAL INDUSTRY SAFETY ORDERS**
Division 1, Chapter 4, Subchapter 7, Article 116
Section 5291
Firing of Explosive Materials (Blasting Operations)
(Heard at the October 21, 2010, Public Hearing)

Mr. Manieri summarized the history and purpose of the proposal and indicated that the proposal is now ready for the Board's adoption.

MOTION

A motion was made by Mr. Thomas and seconded by Mr. Jackson that the Board adopt the proposal.

A roll call was taken, and all members voted “aye.” The motion passed.

B. PROPOSED VARIANCE DECISIONS FOR ADOPTION

1. Consent Calendar

Mr. Beales stated that a hearing panel convened immediately preceding the meeting has sent the proposed decisions on for the Board's consideration, and he requested that the Board adopt the consent calendar as proposed.

MOTION

A motion was made by Mr. Thomas and seconded by Mr. Washington to adopt the consent calendar as proposed.

A roll call was taken, and all members voted “aye.” The motion passed.

C. OTHER

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| 1. | Discussion regarding 2011 Meeting |
| Schedule | |

Ms. Hart stated that at the last Board meeting, Mr. Prescott asked the Board to consider revising the 2011 meeting schedule to eliminate travel to cities where TSA is using the new security system, and he inquired about the Board using webinars or webcasts for the meeting.

The 2011 meeting schedule has been set, and it includes the same airports typically used. Ms. Hart stated that, to her knowledge at this time, only San

Diego has the new scanners, although all the airports eventually will have them.

There are many limitations to webinars or webcasts, and should the Board as a whole express interest, more research would need to be undertaken. The Board is required to comply with the Bagley-Keene Act, and while the Act allows for teleconferencing, there are many noticing requirements and public access issues that would need to be addressed.

If the Board chose to alter the meeting schedule or to change the manner in which meetings are conducted, it would be helpful for the Board to discuss these issues and to provide direction to the staff on their expectations.

Mr. Prescott stated that he had expressed concern regarding the new security system because doctors have told patients who have or who are undergoing chemotherapy or other radioactive-type treatments to avoid the new scanners; so he is concerned about the health issues. He stated that he is aware that the schedule has already been set, but it is something that the Board should examine, as it is a health and safety Board. Although TSA provides the option of a pat-down search, the fact that it is performed in full view of the public is disturbing.

Mr. Prescott further stated that his main concern with the ability to use webinars or other methods for the Board meetings is the cost of travel that the Board and the staff incur. There are usually at least seven staff members that travel plus the Board members, which means 14 air fares, 14 hotel rooms, etc. Although we combine and carpool, there are still about four cars. In light of the current economic situation, if there were a way to keep the travel costs down, it would be cost-effective for the Board and it would help for the public to have the ability to access the webinars.

Chair MacLeod stated that the Labor Code is fairly specific that the Board is to meet around the state on a monthly basis. The rationale for that is to allow either employees, workers, or employers to come to the Board and petition the Board on any matter related to occupational safety and health. Chair MacLeod stated that he recognizes and appreciates the cost involved, but at the same time, the intent of the program is to be able to allow for access on that sort of basis. If the Board were to make changes, it might first involve a change to the law to ensure compliance.

In terms of adjusting the schedule because of the changes in airport security, Chair MacLeod expressed uncertainty that that is a rationale that is really in line with the Board's mission of occupational safety and health. Board members and/or staff do not have to fly; they can drive or take alternate transportation.

Mr. Thomas stated that he likes to drive every once in a while. He also stated that the costs are not so substantial that they preclude travel. He stated that it is a big state, and it would be convenient to hold the meetings in just one place, but that could exclude people from other parts of the state.

Chair MacLeod further stated that, for whatever reason, the current Board members are all from Northern California, although that has not always been the case. There were times when the Board was designed to have the same number of people from Northern and Southern California. In the future, therefore, it is conceivable that there could be Board members from Southern California.

Ms. Hart stated that, based on the previous discussion, Board staff would do no further research into webinars, webcasts, or other meeting alternatives at present but would wait until the Board as a whole directed the staff to do so.

2. Legislative Update

Mr. Beales stated that although the current special session is to address budget issues, there have been bills introduced on other subjects, including a number on the administrative process. There are four that may be of interest to the Board because it is likely that these ideas will persist through the legislative session, even if they do not pass the current special session. One bill would require that notices of proposed regulatory actions be submitted to the legislature at the time that they are publicly noticed; another would expand the economic analysis requirements and the Department of Finance responsibilities regarding those requirements; the third would make drastic changes to the date on which a regulation becomes effective, and it could result in several months elapsing between filing the regulation with the Secretary of State and when the regulation takes affect; and the fourth would require a review five years after a regulation has been adopted, and that review would be applicable to regulations adopted or amended after January 1, 2012.

3. Executive Officer's Report

Ms. Hart was pleased to announce that earlier in the week, Governor Schwarzenegger had reappointed John MacLeod as the Board Chair and Bill Jackson as a Management Representative.

Ms. Hart further stated that she had included information in the Board packets regarding the Enhanced Federal Annual Monitoring Evaluation (EFAME) report. She had hoped to have a meeting with Federal OSHA before today, but that meeting is scheduled for tomorrow.

Also, there is an Air Resources Board meeting occurring today and tomorrow in which they are amending their off-road regulations. In the interim, language has been developed that will be noticed on December 31 for a public hearing on February 17, 2011 in Oakland. Advance copies of the language has been sent out to the Petitioners and interested stakeholders, along with an Initial Statement of Reasons without a Fiscal Impact Statement, which has been submitted for approval. These documents also are on our website.

At the next Board meeting in January, we will be conducting a public hearing on the Cranes and Derricks proposal. This is being done in order to be at least as effective as the Federal Final Rule, which means that the rulemaking package is a Horcher. Mike Manieri and Conrad Tolson, of the Board staff, along with staff from the Division of Occupational Safety and Health, have assembled a huge rulemaking document that encompasses everything that California needs to bring in. We are not doing a typical 45-day Public Hearing Notice on this; it is an abbreviated public hearing. The publish date is December 17, which is approximately 30 days prior to the January Public Hearing. However, this information was posted on our website earlier this month, and it has been sent to interested stakeholders in order to provide as much notice as possible.

Ms. Hart thanked the Board and the staff for another rewarding year.

4. Future Agenda Items

Mr. McDermott stated that during the past few Board meetings, the Board has adopted language that was triggered by Appeals Board decisions. He wondered if there are standards that have ambiguous wording that the Board could ask staff or DOSH to identify before there is an accident, a citation, or an adverse Appeals Board action. He stated that he was not asking that staff examine every regulation, but perhaps staff could find a few significant ones to modify before they become an issue.

Chair MacLeod responded that staff could certainly consider such a review, and in either January or February the Board would be receiving a rulemaking calendar for the next year. He further stated that staff tries to note such problems in the course of regular business. Ms. Hart indicated that the Board staff tries to be alert for such issues.

Ms. Hart stated that (inaudible)

D. CLOSED SESSSION

The Closed Session was cancelled.

E. ADJOURNMENT

Chair MacLeod adjourned the Business Meeting at 11:10 a.m.